It would seem obvious from the provisions of this section of the statute that the rentals paid into court by the debtor are for the benefit of the secured creditors holding liens upon the respective properties. The rents are first to be applied to the taxes and upkeep and any balance is then to be paid directly to the creditors as their interests may appear. In the instant case the rents paid by the debtor would in turn be paid to the secured creditors; and by the rental order in this particular case it was provided that any such rentals would be paid to the secured creditors in proportion to their claims because the lands were all farmed as one unit. If, in the instant case, it be assumed that the rentals due from the debtor in the fall of 1943 amounted to $5,000.00, and that, in turn, half of such sum would be paid to certain friendly creditors, it would seem obvious that, instead of going through the roundabout procedure of the debtor paying into court the full amount of $5,000.00 and then having half paid to certain creditors who are friendly to the debtor, it would be just as well for the debtor to file a waiver from these friendly creditors and then pay into court only the balance of the rental due to the nonwaiving creditors.

This court has said in *Wright* v. *Union Central Life Insurance Company*, 61 Sup. Ct. 196, 311 U. S. 273, 83 L. Ed. 184, 44 Am. Bankr. Rep. (N. S.) 280, that,

> Syl. 3. "The Frazier Lemke Act (§ 75(s) of the Bankruptcy Act) must be liberally construed to give the farmer-debtor the full measure of relief afforded by Congress, and its benefits are not to be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the act."

We believe that a requirement that the debtor pay into court the full amount of the rents due, even though some of the secured creditors have filed a waiver of their share

of the rents, would violate the intent of Congress that the Act be liberally construed to accord the debtor the benefits intended. It would seem to be a most futile thing to require the debtor to pay into court rents which would in turn be returned either to the debtor or the creditors with whom she had made certain financial arrangements. It would extinguish her efforts, and success attending same, in securing extensions, discounts and other relief from friendly creditors.

If we assume that the total rent due was the amount as found by the trial court, and if the debtor had paid that amount into court, the objecting secured creditors, the respondents herein, would only have been entitled to their share, and the remainder would have gone to the creditors with whom the debtor had made her private arrangements for outside settlement. Such requirement would render void and useless any concessions her friendly creditors had seen fit to give her. There is no dispute in the record but what such outside settlements were made with the creditors who filed a waiver of their share of the rents. Surely then, the debtor ought to be permitted to pay into court for the objecting creditors only the amount which would be in turn payable to them and be relieved of the payment, which would be in turn paid to the creditors who had been willing to and who had waived their share of the rentals.

In the instant case it is not a question of there being no proof as to the matter of the waiver of the rents by part of the creditors. The record (pages 80 to 83) shows a written waiver of rents by all of the secured creditors other than the respondents herein. This waiver in writing contained the following:

> "4. That these petitioners have further made settlement with the debtor respecting the rents and income

from the real estate upon which these petitioners hold their secured claims * * *

* * * * * * *

"6. * * * these petitioners do not desire or require any order of the court touching upon the settlement and accounting for the rents for the above mentioned real estate."

Surely, under these circumstances, for the court to find that the debtor was in default because she did not pay into court rents for the creditors with whom she had made outside settlements would seem to be captious to the highest degree and would seem to construe the provisions of the Bankruptcy Act most formalistically and narrowly instead of liberally. The objecting creditors, respondents herein, have no interest in the rents which were waived by the so-called friendly creditors, and since the debtor tendered into court for the objecting creditors, respondents herein, all that they were entitled to, or offered to do so, the order of the court finding the debtor to be in default under the rent order is clearly erroneous. Such an order disregards the spirit and letter of the Act. The effect of such order is to hinder, discourage, prevent and make it impossible for a debtor to accomplish her financial rehabilitation with the aid and assistance of her friendly creditors. It amounts to a prohibition against both the debtor and her creditors to freely enter into contracts. It tends to defeat the very purpose of this relief Act.

Both the trial court and the Circuit Court of Appeals were critical of the debtor and found, as one of the elements of her contumacious disobedience of the order, the fact that the debtor had made outside settlements with some of the creditors. As a matter of fact, we think that that is the very thing that the statute contemplates, namely, that during the period of stay the debtor be enabled to

make arrangements with the various creditors for the settlement and liquidation of their respective claims. If, by reason of the fact that the debtor received some income, which she was not obligated under the statute to pay to the creditors, and she in turn used that income to arrange for the liquidation of the claims of certain of the creditors, who were willing to compromise their indebtedness, same is of no concern to the remaining secured creditors or to the court. If the debtor is able to interest friends, associates, relatives or others to help her to rehabilitate herself, she should be encouraged to do so, rather than be criticized. The Act gives her three years to solve her financial problems,—not merely to exist and put off her ultimate financial downfall.

The Circuit Court of Appeals, Eighth Circuit, in *Klevmoen* v. *Farm Credit Administration*, 138 Fed. (2) 609, has held:

> "* * * It is provided that he (the debtor) shall remain in possession of his property under the supervision and control of the court * * * provided he pays a reasonable rental * * * Paying that rental in respect, now, of real estate, he is entitled, in our opinion, to so much of the products of the soil as remains above the rental, first to defray the expense * * * and secondly, in theory at least, as an instrument of redemption."

If the Circuit Court of Appeals concedes that the debtor has the right to use any unobligated income as an instrument of redemption, it would seem that the making of compromise settlements with any willing creditors is such an instrument of redemption. The Circuit Court of Appeals in the cited case admits that the debtor had the right to use all of her income over and above the amount due as rents for the purpose of aiding in her financial rehabilitation. The debtor therefore ought not to be criti-

cized in the instant case because she used some of her funds thus to make settlements with a portion of the creditors or to buy up a portion of the outstanding secured claims and have them placed in friendly hands. Where she used all funds obtainable from her operations and from her friends and relatives to alleviate her financial stress, instead of expending same for her personal pleasure and enjoyment, she should be congratulated, praised, and not censured. No one is harmed by such doing and in fact this accomplishes the very purpose of the Act that the debtor be given an opportunity to rehabilitate herself financially during the three year stay period. This debtor has made progress against seemingly insurmountable odds, and should be accorded full credit for her tireless efforts and perseverance. Since each claim stands on its own, there is no harm done to one creditor if the debtor makes a compromise settlement with a different creditor. It is not any concern of the remaining creditors as to what the debtor has done with reference to a settlement with any other creditors.

In the instant case the debtor offered to pay into court all of the rents applicable to the claims held by the respondents, who were the creditors who had not waived payment of rent. The debtor filed a waiver by the remaining secured creditors as to any such rentals. Certainly nothing more ought to have been demanded of the debtor. She should have been accorded the opportunity to pay into court the rents tendered by her and be relieved of any finding of default on her part.

Specifications Nos. 3, 4 and 5 as to Redemption

Section 75(s) of the Bankruptcy Act (11 U. S. C. A. 203(s)), provides:

> "Such farmer may * * * petition the court that all of his property * * * be appraised * * *

> Upon such a request being made the referee * * * shall designate and appoint appraisers * * * such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value."

Section 75(s)(3) of the Bankruptcy Act (11 U. S. C. A. 203 (s)(3)), provides:

> "At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession * * * provided, that upon request of any secured or unsecured creditor * * * the court shall cause a reappraisal of the debtor's property * * * and the debtor shall then pay the value so arrived at into court * * * provided that upon request in writing of any secured creditor or creditors the court shall order the property upon which such secured creditors have a lien to be sold at public auction."

It will be noted that the Act Provides for an initial appraisal and provides that the debtor may redeem by paying into court the amount of such appraisal. The Act then has two provisos, one of which provides for a reappraisal and the other of which provides for a sale of the property. The question is, when do these provisos come into effect? The last proviso was considered by this court in *Wright* v. *Union Central Life Insurance Company*, 61 S. Ct. 196, 311 U. S. 273, 85 L. ed. 184, 44 Am. Bankr. Rep. (N. S.) 280, wherein this court held that the request of the debtor for redemption pursuant to the procedure prescribed in the first proviso cannot be defeated by a request of a secured creditor for a public sale under the second proviso. The question here presented is whether the right of the debtor to redeem at the amount of the initial appraisal can in any and every instance be defeated by the mere demand of the creditor for a reappraisal under the first proviso of said Section 75(s)(3).

We think that this question should be solved bearing in mind the rules laid down by this court in *Wright* v. *Union Central Life Insurance Company, supra,* to the effect that the provisions of the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress. Certainly, if the debtor could be deprived of the right to redeem at the initial appraisal in any and every case, the Act would not have read as it does. We think Congress could not have intended that the debtor could be denied the right to redeem at the original appraisal by the creditors simply filing a request for reappraisal. Such an interpretation would make nugatory the provisions of the Act for the original appraisal and would render the requirement for an initial appraisal wholly ineffectual. There would be no occasion for an initial appraisal. No appraisal would be necessary until after the three year stay had expired. Certainly Congress must have had some thought in mind with reference to the initial appraisal and thought that there was some occasion when the debtor could redeem at that initial appraisal. The construction of the Act as given in this case by the Circuit Court of Appeals simply destroys the provision for redemption at the amount of the first appraisal, and holds that in any and every case the creditors can prevent the debtor from making such redemption. It renders the initial appraisal a useless gesture.

The right of secured creditors to demand a reappraisal, in the instant case, cannot be grounded upon the decision of the Circuit Court of Appeals, Seventh Circuit, in *In re Wright,* 126 Fed. (2d) 92. In that case, the court made it clear that the right of the creditors to demand a reappraisal did not exist in every case, but that,

> "The court, in the interest of justice, can, and should, make a reappraisal, if the facts warrant it."

We believe that, if the creditors are to be accorded the right to prevent a redemption at the initial appraisal by demanding a reappraisal, the right to the reappraisal must depend upon new facts and equitable principles, and cannot be an absolute right. Bearing this thought in mind, we think that the most that can be said with reference to the right of the secured creditors to prevent the debtor redeeming at the initial appraisal, by demanding a reappraisal, would be that such right could be contemplated by the statute to exist only where some reasonable time has elapsed between the time of the first appraisal and the time that the debtor offers to redeem, and where new facts or some other equitable circumstances exist, showing that the redemption at the initial appraisal would now be inequitable. The mere request cannot take the place of an appeal from the appraisal order. It cannot serve to suspend the appraisal order and prevent the debtor from exercising his redemption rights thereunder.

In the instant case, the record shows that the debtor prayed in her original amended petition that the court grant her an appraisal of her property (Record, page 18). This demand was made April 18, 1939. Through no fault of the debtor, the appraisal was not granted and the debtor had to again apply for an appraisal on January 23, 1942. (See Record, page 21.) The complete record of the appraisers was not filed until June 18, 1942. (See Record, page 28.) Then these secured creditors immediately filed exceptions to the appraisal. Such exceptions were not overruled by the court until August 6, 1942. At that time the ruling was without prejudice to a later application on the part of any and all creditors for a reappraisal (Record, page 36). Consequently, the first opportunity the debtor had to redeem was after August 6, 1942, and then such right was impaired, and practically of no effect, by the order regarding a reappraisement. Nevertheless, the

debtor, immediately thereafter, on August 12, 1942, accepted the appraisal and asked that the court grant her a reasonable time within which to make payment and requested the court to enter an order prescribing the procedure. (See Record, page 36.) On January 23, 1943 the debtor's consent to the appraisal and motion to fix time and terms of payment was overruled by the court (Record, page 41, Par. IV). The respondents' demand for a reappraisal was again deferred by the court (Record, page 42, Par. VI). There was never a moment when this debtor was allowed to redeem at the appraisal figure. Then on September 4, 8 and 23, 1943 the respondents filed additional applications for a reappraisal, and followed same up with their joint motion or application to terminate the three year stay.

In answer to the application of these secured creditors to end the three-year stay and to have the debtor adjudged in default, the debtor alleged that, ever since February 17, 1943, she has sought to redeem the real estate but that the court and the secured creditors, respondents herein, have denied her such right by demanding payment of excessive rentals and by the making of demands not authorized by the law (Record, pages 77-79). The respondents herein, in their reply, admitted that they have requested a reappraisal and have demanded that the debtor be required to pay all delinquent rentals at the time of redemption and in addition thereto the reappraised value of her property (Record, page 85).

The record thus shows that the debtor, petitioner herein, never was given an opportunity to redeem at the initial and sole appraisal; that she sought so to do constantly prior to the date of the entry of the orders herein, and that she was prevented, through no fault of her own, from redeeming at such initial and sole appraisal. The delay in attempting to make redemption was due to the fact that the

secured creditors, respondents herein, demanded that conditions be placed upon the right of redemption in excess of what the law prescribed. Such conditions would have required the debtor to pay rent for a period prior to the entry of the stay order. Since the first appraisal on May 21, 1942, there has been a continual filing of exceptions, objections and motions for reappraisals, culminating on October 4, 1943 in a motion by these unsecured creditors to strike the debtor's petition for time and terms of redemption under the initial and sole appraisal. The last paragraph of such pleading (Par. 5, Record, page 72) discloses the persistent efforts of these respondents to prevent this debtor from redeeming her property. It is the secured creditors, respondents herein, who have occasioned the delay, and the debtor ought not to be penalized thereby. The initial appraisal still stands and would have been used to end this proceeding, except for the efforts of these respondents. The debtor should have been permitted to redeem under it, and should now be given that privilege.

Under these circumstances, we believe that a liberal interpretation of the Frazier-Lemke Act (§ 75(s) of the Bankruptcy Act), to give the debtor the rights which Congress intended, could not be said to provide that the secured creditors have a right to demand that the debtor redeem at a reappraised value in the instant case. At the time of the appraisal herein the value of the property was determined and the only constitutional right of the secured creditors, respondents herein, was to receive that value. The debtor did not request any delay in redeeming at that value; therefore she believes that there is no justification for the demand of the secured creditors that they be given the advantage of redemption at a new appraisal at this time and after all this delay. It is admitted that during the year 1943 there was a substantial increase in the market price of land in Box Butte County, Nebraska. The action of the

secured creditors and the court in preventing the debtor from making redemption, at the times requested by her, is now attempted to be made use of by the respondents herein, to require the debtor to pay more for the land than she would have had to pay at the time that she wanted to make redemption. It would not seem fair that the secured creditors, by making excessive demands, and the trial court, by refusing to fix the time and terms for redemption, could prevent a redemption when the debtor wanted to redeem, and thereby demand that the debtor redeem at a reappraised value at a later date. The equities of the case would indicate that the debtor should be given her right to redeem as of the date she wanted to do so, and that the delay, caused through no fault on her part, should not be used against the debtor.

We believe that it was clearly the intention of Congress that the debtor should have an opportunity to redeem at the amount of the first appraisal for a reasonable length of time. We believe that the debtor's right to make such redemption cannot be denied her. It is our most earnest contention that the debtor's right in this redemption, at the value fixed by the initial appraisal, survives all lapse of time until the debtor has had a fair and full opportunity to redeem at that appraisal. Just as the Statute of Limitations is suspended so as to preserve the creditor's rights while the bankruptcy proceedings are pending, in like manner the debtor's right to redeem at the value fixed by the initial appraisal should remain, so long as she is hindered by exceptions, motions and similar pleadings. The initial and sole appraisal became final, but redemption under it was prevented by these respondents. We believe that, under the circumstances, the debtor should be permitted to redeem, at the value fixed by the initial appraisal. The court ought not to hold over the head of the debtor the threat of a reappraisal to be ordered at some future un-

certain time at the pleasure of the secured creditors and the court, and thus deprive the debtor of any opportunity to redeem under the initial appraisal, despite the fact that the debtor always wanted to do so.

Conclusion

It would seem evident that the judgment of the Circuit Court of Appeals is contrary to the directions of this court that the provisions of the Frazier-Lemke Act (§ 75(s) of the Bankruptcy Act) for the relief of the farm debtor be liberally construed. The Circuit Court of Appeals in the instant case narrowly construed the Act so as to adjudge the farm debtor to be in default on the payment of rents, when the debtor had offered to pay the rents due all the secured creditors, except those who had waived payment. This we believe to be uncalled for. It deprives the farm debtor of the opportunity to make a financial rehabilitation, and condemns her for her attempt thereat.

The ruling of the Circuit Court of Appeals further deprives the farm debtor of any opportunity to redeem at the value fixed at the initial appraisal, although she had been continuously seeking such opportunity from the date the initial appraisal was confirmed by the court until the trial below. It nullifies and renders useless such initial appraisal.

This case does not present a situation where the farm debtor delayed in tendering redemption for a period of time after the initial appraisal, but this case presents the situation where the farm debtor sought to redeem promptly after the initial appraisal and repeatedly requested such an opportunity. Since the debtor was denied the opportunity to redeem at the value fixed by the initial appraisal, through no fault on her part, we believe that the debtor should now be accorded the right to redeem at the initial appraisal.

The ruling of the Circuit Court of Appeals places an unjust burden upon the debtor and penalizes her from making redemption of her property and is contrary to the letter and spirit of the Act.

We earnestly contend that the judgment of the Circuit Court of Appeals affirming the orders of the district court should be reversed, and that this debtor should be permitted to pay the amount tendered as rent, and redeem her property at the initial and sole appraisal of same.

Respectfully submitted,

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